

CARPET AMERICA RECOVERY EFFORT
ENFORCEMENT EVALUATION
INFORMATIONAL UPDATE

To: Scott Smithline, Director

From: Mark DeBie, Deputy Director,
Waste Permitting, Compliance, Mitigation

Date: December 20, 2016

Subject: Status of the Enforcement Evaluation of CARE's 2015 Annual Report

Summary

On September 20, 2016, the Director referred Carpet America Recovery Effort (CARE) to the Waste Evaluation and Enforcement Branch (WEEB) to commence an enforcement evaluation on the *California Carpet Stewardship Program Annual Report, January 2015 – December 2015*, submitted by CARE on June 30, 2016, as well as previous Annual Reports, and consider actions including but not limited to imposition of civil penalties, compliance schedule, or other options to achieve compliance. The Director requested that the evaluation be based on the department's Statewide Technical and Analytical Resources (STAR) Branch findings presented at the September 20, 2016 Department Monthly Meeting and other potential violations of the statute and regulations. WEEB evaluated potential enforcement options (imposition of civil penalties, compliance schedule/order, or other options to achieve compliance) and believe that pursuing civil penalties (in coordination with the legal office) through an accusation for penalties on CARE is the most appropriate course of action at this time.

ANALYSIS AND FINDINGS

Background

Assembly Bill 2398 (Chapter 681, Statutes of 2010) established a mandatory carpet stewardship program, to increase the amount of postconsumer carpet that is diverted from landfills and recycled into secondary products or otherwise managed in a manner that is consistent with the state's hierarchy for waste management practices pursuant to Public Resources Code (PRC) 40051 (see PRC 42970 et seq.). It is the responsibility of manufacturers of carpet sold in California, individually or through their designated stewardship organization (PRC 42972(a)), to design and implement the California Carpet Stewardship Program to achieve "continuous meaningful improvement" (PRC 42975) in landfill diversion and recycling of postconsumer carpet and any other goals included in the plan are achieved.

The department has the authority and responsibility to enforce the requirements mandated by statute, regulation, and assure that the approved Plan is implemented. Pursuant to its responsibilities, the department reviews CARE's Annual Reports for compliance with the carpet

stewardship law in PRC 42970 et sec. and 14 CCR 18940 et sec. If at such time, the department determines that the Annual Reports fail to demonstrate continuous meaningful improvement in the rates of recycling and diversion of postconsumer carpet and any other goals included in the plan (PRC 42975), the department may impose civil penalties to achieve the compliance with the law (PRC 42978). Per 14 CCR 18945 (a) manufacturers are subject to penalties as a result of the failure of their designated stewardship organization to comply with this Article on their behalf. PRC 42978 allows the department to impose penalties up to \$10,000 per day. When assessing penalties, the department must take into account the nature and extent of the violation and the factors found in PRC 42978 and CCR 18945.2.

Civil penalties may be imposed on a stewardship organization following administrative procedures identified in 14 CCR 18945.3 in accordance with the Administrative Procedure Act in Government Code section 11500 et seq. If the department has determined that penalties should be imposed, then the department would serve the stewardship organization, manufacturers and all other responsible parties, with an accusation. At that time, the responsible party may pay the penalties or may request a hearing in front of an Administrative Law Judge (ALJ).

Per precedent and practice, the department may decide to not file an accusation and instead issue a compliance order. A compliance order would include milestones and timeframes to comply. Failure to comply will result in filing of an accusation for penalties at that time. WEEB would monitor the implementation progress of the compliance order.

Penalty Criteria

To determine penalties applicable in this case, the department shall consider the factors outlined in 14 CCR 18945.2. These include:

- The nature, circumstances, extent, and gravity of the violation(s).
- History of violation(s) of the same or similar nature.
- The number and severity of the violation(s).
- Evidence that the violation was intentional, knowing or negligent.
- The willfulness of the violator's misconduct.
- Whether the violator took good faith measures to comply with the law and the period of time over which these measures were taken;
- The size of the violator.
- Evidence of any financial gain resulting from the violation(s).
- The economic effect of the penalty on the violator.
- The deterrent effect that the imposition of the penalty would have on both the violator and the regulated community."
- Any other factor that justice may require.

Analysis

As directed, WEEB commenced an enforcement evaluation on CARE's 2015 Annual Report, as well as previous Annual Reports, and considered actions including but not limited to imposition of civil penalties, compliance schedule, or other options to achieve compliance.

WEEB investigated all related requirements, and data and analyzed that information. The analysis was based on available records of fact and relevant results and statements reported within CARE's Annual Reports and quarterly reports, and other relevant documents, including information outlined in the following findings presented at the September 20, 2016, Department Monthly Meeting:

- Key Finding 1: "The recycle output and other Program goals are not showing continuous meaningful improvement"
- Key Finding 2: "Consumers purchasing carpet do not have reasonable access to recycling services in all counties"
- Key Finding 3: "CARE's current Marketing, Education and Outreach (ME&O) efforts have not resulted in increased carpet recycling of diversion reported in the 2015 Annual Report. As CalRecycle previously concluded in its September, 2015 review of the 2014 Annual report, key target audiences such as installers, retailers, and consumers remain unaware of CARE's Carpet Stewardship Program, what recycling services are available, what assessment funds are used for, and what their respective roles are in making the Program successful. It is unclear whether individual ME&O metrics identified by CARE actually lead to continuous meaningful improvement."
- Key Finding 4: "CARE is not responding to market changes in a timely manner with assessment and incentive adjustments, and the assessment may not be set high enough to fund infrastructure development and drive markets for increased recycled output."

Findings

Based on this investigation and analysis, the Waste Evaluations and Enforcement Branch has found that CARE's Annual Reports for 2013, 2014 and 2015 fail to demonstrate compliance with the carpet law outlined in PRC Section 42970 et sec. and 14 CCR 18940 et sec. CARE, and the manufacturers which it represents, have continued to violate these provisions even after the department, on Sept 25, 2013, September 16, 2014, and September, 15, 2015, found CARE had not met the requirements of the law and requested CARE to implement changes.

After looking at the facts, WEEB evaluated potential enforcement options (imposition of civil penalties, compliance schedule, or other options to achieve compliance) and believe that pursuing civil penalties (in coordination with the legal office) through an accusation for penalties on CARE is the most appropriate course of action at this time.
